



DEPARTMENT OF HEALTH AND HUMAN SERVICES

[OMHA-1802-N]

Medicare Program; Administrative Law Judge Hearing Program for Medicare Claim and Entitlement Appeals; Quarterly Listing of Program Issuances—July Through September 2018

AGENCY: Office of Medicare Hearings and Appeals (OMHA), HHS.

ACTION: Notice.

SUMMARY: This quarterly notice lists the OMHA Case Processing Manual (OCPM) instructions that were published from July through September 2018. This manual standardizes the day-to-day procedures for carrying out adjudicative functions, in accordance with applicable statutes, regulations, and OMHA directives, and gives OMHA staff direction for processing appeals at the OMHA level of adjudication.

FOR FURTHER INFORMATION CONTACT: Jason Green, by telephone at (571) 777-2723, or by e-mail at jason.green@hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Medicare Hearings and Appeals (OMHA), a staff division within the Office of the Secretary within the U.S. Department of Health and Human Services (HHS), administers the nationwide Administrative Law Judge hearing program for Medicare claim; organization, coverage, and at-risk determination; and entitlement appeals under sections 1869, 1155, 1876(c)(5)(B), 1852(g)(5), and 1860D-4(h) of the Social Security Act (the Act). OMHA ensures that Medicare beneficiaries and the providers and suppliers that furnish items or services to Medicare beneficiaries, as well as Medicare Advantage organizations (MAOs), Medicaid State

agencies, and applicable plans, have a fair and impartial forum to address disagreements with Medicare coverage and payment determinations made by Medicare contractors, MAOs, or Part D plan sponsors (PDPSs), and determinations related to Medicare eligibility and entitlement, Part B late enrollment penalty, and income-related monthly adjustment amounts (IRMAA) made by the Social Security Administration (SSA).

The Medicare claim, organization determination, coverage determination, and at-risk determination appeals processes consist of four levels of administrative review, and a fifth level of review with the Federal district courts after administrative remedies under HHS regulations have been exhausted. The first two levels of review are administered by the Centers for Medicare & Medicaid Services (CMS) and conducted by Medicare contractors for claim appeals, by MAOs and an independent review entity for Part C organization determination appeals, or by PDPSs and an independent review entity for Part D coverage determination and at-risk determination appeals. The third level of review is administered by OMHA and conducted by Administrative Law Judges and attorney adjudicators. The fourth level of review is administered by the HHS Departmental Appeals Board (DAB) and conducted by the Medicare Appeals Council (Council). In addition, OMHA and the DAB administer the second and third levels of appeal, respectively, for Medicare eligibility, entitlement, Part B late enrollment penalty, and IRMAA reconsiderations made by SSA; a fourth level of review with the Federal district courts is available after administrative remedies within SSA and HHS have been exhausted.

Sections 1869, 1155, 1876(c)(5)(B), 1852(g)(5), and 1860D-4(h) of the Act are implemented through the regulations at 42 CFR part 405 subparts I and J; part 417, subpart Q; part 422, subpart M; part 423, subparts M and U; and part 478, subpart B. As noted above, OMHA administers the nationwide Administrative Law Judge hearing program in accordance with these

statutes and applicable regulations. To help ensure nationwide consistency in that effort, OMHA established a manual, the OCPM. Through the OCPM, the OMHA Chief Administrative Law Judge establishes the day-to-day procedures for carrying out adjudicative functions, in accordance with applicable statutes, regulations, and OMHA directives. The OCPM provides direction for processing appeals at the OMHA level of adjudication for Medicare Part A and B claims; Part C organization determinations; Part D coverage determinations and at-risk determinations; and SSA eligibility and entitlement, Part B late enrollment penalty, and IRMAA determinations.

Section 1871(c) of the Act requires that the Secretary publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every three months in the **Federal Register**.

II. Format for the Quarterly Issuance Notices

This quarterly notice provides the specific updates to the OCPM that have occurred in the three-month period of July through September 2018. A hyperlink to the available chapters on the OMHA website is provided below. The OMHA website contains the most current, up-to-date chapters and revisions to chapters, and will be available earlier than we publish our quarterly notice. We believe the OMHA website provides more timely access to the current OCPM chapters for those involved in the Medicare claim; organization, coverage, and at-risk determination; and entitlement appeals processes. We also believe the website offers the public a more convenient tool for real time access to current OCPM provisions. In addition, OMHA has a listserv to which the public can subscribe to receive notification of certain updates to the OMHA website, including when new or revised OCPM chapters are posted. If accessing the OMHA website proves to be difficult, the contact person listed above can provide the information.

III. How to Use the Notice

This notice lists the OCPM chapters and subjects published during the quarter covered by the notice so the reader may determine whether any are of particular interest. We expect this notice to be used in concert with future published notices. The OCPM can be accessed at <https://www.hhs.gov/about/agencies/omha/the-appeals-process/case-processing-manual/index.html>.

IV. OCPM Releases for July Through September 2018

The OCPM is used by OMHA adjudicators and staff to administer the OMHA program. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, and OMHA directives.

The following is a list and description of OCPM provisions that were revised in the three-month period of July through September 2018. This information is available on our website at <https://www.hhs.gov/about/agencies/omha/the-appeals-process/case-processing-manual/index.html>.

OCPM Chapter 5: Representatives

Chapter 5, Representatives. This chapter describes the role of representatives in the appeals process, including the documentation required to establish a valid representation, representative rights and responsibilities, communications with representatives and represented parties, and changes of representative due to delegation, revocation, or termination of an appointment. This chapter also discusses the fee approval process for representatives and the circumstances under which an eligible individual or entity may be entitled to reasonable attorney fees and other expenses under the Equal Access to Justice Act.

OCPM Chapter 6: CMS, CMS Contractor, and Plan Roles

Chapter 6, CMS, CMS Contractor, and Plan Roles. This chapter describes when and how CMS, a CMS contractor, or a plan (for example, a Medicare Advantage organization or Part D plan sponsor) may join the proceedings on a request for hearing as a party or as a non-party participant. This chapter also describes the requirements for a valid election or request to participate in the proceedings, and the circumstances under which an election may be deemed invalid or a request may be denied. This chapter also discusses when evidence, position papers, and written testimony may be submitted by CMS, a CMS contractor, or a plan.

OCPM Chapter 7: Adjudication Time Frames, Case Prioritization, and Escalations

Chapter 7, Adjudication Time Frames, Case Prioritization, and Escalations. This chapter describes the time frames for an adjudicator to issue a decision, dismissal, or remand in an appeal. This chapter also addresses when an adjudication time frame may be delayed or extended, and how it can be waived by the appellant. This chapter discusses OMHA's case prioritization policy, which determines the general order in which appeals are processed. Lastly, this chapter describes the types of appeal that may be escalated to the Medicare Appeals Council when an adjudicator is unable to issue a decision, dismissal, or remand within an applicable adjudication time frame, and the requirements for a valid request for escalation.

OCPM Chapter 14: Scheduling and Noticing for Prehearing Conferences and Hearings

Chapter 14, Scheduling and Noticing for Prehearing Conferences and Hearings. This chapter describes the process for scheduling and providing notice of prehearing conferences and hearings, the actions that must be completed before a hearing is scheduled, and the circumstances when a hearing is required. This chapter also identifies the parties, potential parties, and participants to whom notices must be sent, and how to address responses to these notices and any

objections or requests that may be made by the notice recipients. Finally, this chapter discusses the circumstances in which a hearing may be rescheduled or canceled, and when a supplemental hearing may be necessary.

Dated: November 6, 2018.

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